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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,198	07/31/2003	David M. Stravitz	02433/LH	3158
1933	7590	05/06/2004	EXAMINER	
FRISHAUF, HOLTZ, GOODMAN & CHICK, PC			HUYNH, LOUIS K	
767 THIRD AVENUE			ART UNIT	PAPER NUMBER
25TH FLOOR				3721
NEW YORK, NY 10017-2023			DATE MAILED: 05/06/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/633,198	STRAVITZ, DAVID M.
	<b>Examiner</b>	<b>Art Unit</b>
	Louis K. Huynh	3721

**- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 31 July 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-63 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-63 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a))

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/31/03 & 12/09/03.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
2. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).
3. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).
4. Claims 1-63 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6, 10-14, 35-46, 56-64, 72, 80 and 82 of U.S. Patent No. 6,612,099. Although the conflicting claims are not identical, they are not patentably distinct from each other because a person having ordinary skill in the art would have found the claims to have been obvious variations of the claims of the patents. The claims of the patents and the claims of the present application are both directed to a waste disposal device comprising

a rotation mechanism for rotating a quantity of waste when held by a retention mechanism while a cartridge containing a length of flexible tubing is stationary in order to twist the tubing and enclose the held quantity of waste. While the claims of the present application and the claims of the patents may have variations and differences in their scope and terminology, the variations and differences would have been obvious to one having ordinary skill in the art.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1, 48 and 53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification and the drawings do not disclose and/or teach a waste disposal device comprising a rotation mechanism that rotates a quantity of waste. The specification and drawings disclose a waste disposal device having a rotation mechanism for rotating a retention mechanism which retains a quantity of waste contained in a length of flexible tubing in order to twist the tubing and enclose the quantity of waste in the length of flexible tubing; however, the specification and the drawings do not disclose and/or teach a waste disposal device having a rotation mechanism that directly rotates a quantity of waste while the rotational movement of the retention mechanism has not been set forth.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-8, 14-31, 34-50, 56-59, 61 and 63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 48 and 56 are incomplete for lacking the structural/functional relationships between the retention mechanism and the rotation mechanism. Note that the quantity of waste contained in the length of flexible tubing is rotatable only by the rotation of the retention mechanism that holds the length of flexible tubing with the quantity of waste therein, and the rotational movement of the retention mechanism is caused by the rotation mechanism; therefore, the quantity of waste could not be realized without such relationship.

Claim 16, line 2: "the rotation of said retention mechanism" lacks proper antecedent basis.

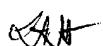
***Allowable Subject Matter***

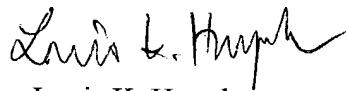
9. Claims 1-8, 14-31, 34-50, 56-59, 61 and 63 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, and a filing of a terminal disclaimer to overcome the double patenting set forth in this Office action.

10. Claims 9-13, 32, 32, 51-55, 60 and 62 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and a filing of a terminal disclaimer to overcome the double patenting set forth in this Office action.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure has been cited on form PTO-892 along with the applied prior art.
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is (703) 306-5694. The examiner can normally be reached on M-F from 9:30AM to 5:00PM.
13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
LH  
May 03, 2004

  
Louis K. Huynh  
Patent Examiner  
Art Unit 3721